LIBRARY
SUPREME COURT, U. S.
Supreme Court, U.S.
FILED
FEB 13 19[illegible]
E. ROBERT SEAVER, [illegible]

IN THE

Supreme Court of the United States

October Term, 1970

No. 1347

FAIRVIEW DEVELOPMENT, INC.,
Appellant,

v.

CITY OF FAIRBANKS,
Appellee.

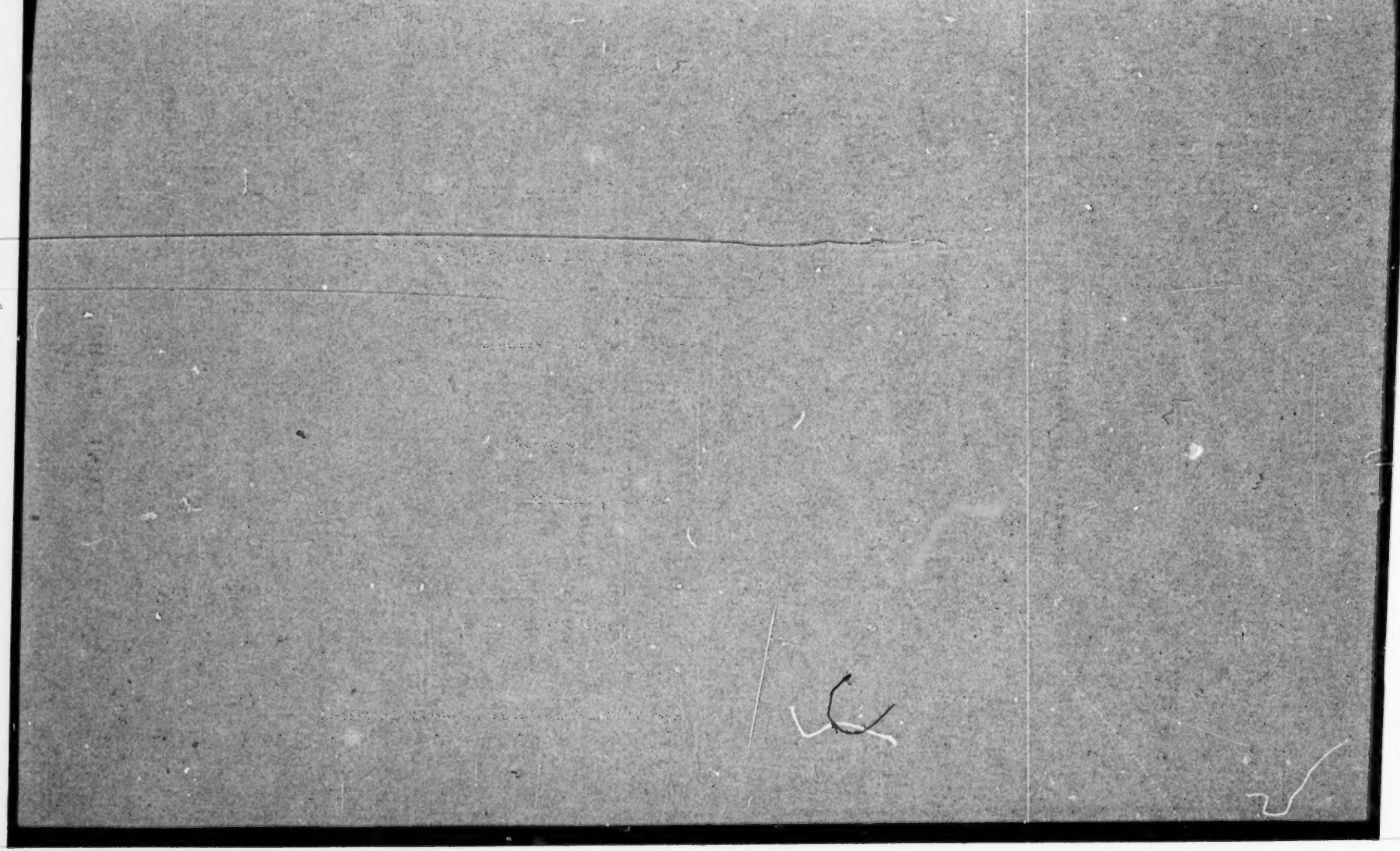
UPON APPEAL FROM THE JUDGMENT OF THE SUPREME COURT OF ALASKA

JURISDICTIONAL STATEMENT

LYCETTE, DIAMOND & SYLVESTER
By LYLE L. IVERSEN
Attorneys for Appellant

Office and Post Office Address:
400 Hoge Building
Seattle, Wasington 98104
Telephone: MAin 3-1330

CRAFTSMAN & NET PRESS SEATTLE, WASHINGTON



SUBJECT INDEX

	Page
Opinion Below	1
Grounds for Invoking Jurisdiction	2
Questions Presented	3
Statement of Case	4
Questions Are so Substantial as to Require Plenary Consideration	9
Appendices:	
Appendix A—Mandate	A-1
Appendix B—Opinion	A-2
Appendix C—Judgment	A-6
Appendix D—Findings	A-8

TABLES OF AUTHORITY

Table of Cases

Atlantic Coastline Railroad Co. v. Goldsborough, 232 U.S. 548, 58 L.Ed. 721	8
Fairview Development, Inc. v. City of Fairbanks, 475 P.2d 35 (Alaska)	1
Murray v. Charleston, 96 U.S. 432, 24 L.Ed. 760	8
St. Paul Gas Light Co. v. St. Paul, 181 U.S. 148, 45 L.Ed. 788	8
Seltenreich v. Fairbanks, 13 Alaska 582, 211 F.2d 83, cert. denied, 348 U.S. 887, 99 L.Ed. 697	8
Walsh v. School District of Philadelphia, 22 A.2d 909, cert. denied, 315 U.S. 823, 86 L.Ed. 1219	8

Constitutional Provisions

State of Alaska Constitution, Article I, Section 15	6
United States Constitution,	
Amendment XIV	2, 3, 4, 6, 8
Article I, Section 10	2, 3, 6

Statutes

	Page
City of Fairbanks Ordinance 1068	2-3, 4, 5
City of Fairbanks Ordinance 1068, Section 7	2, 3, 4, 5-6, 7, 8
28 U.S.C., Sec. 1257(2)	2

IN THE

Supreme Court of the United States

October Term, 1970

No. .....

FAIRVIEW DEVELOPMENT, INC.,
Appellant,
v.
CITY OF FAIRBANKS,
Appellee.

UPON APPEAL FROM THE JUDGMENT OF THE SUPREME COURT OF ALASKA

JURISDICTIONAL STATEMENT

OPINION BELOW

This appeal is from the judgment of the Supreme Court of Alaska entered on the 23rd day of November, 1970, affirming judgment of the Superior Court for the State of Alaska, Fourth Judicial District at Fairbanks. The mandate is set out in Appendix A. An opinion of the court was entered October 9, 1970 and it was reported under the title FAIRVIEW DEVELOPMENT, INC. v. CITY OF FAIRBANKS in 475 P.2d 35. That opinion is set out in Appendix B herein.

The judgment of the Superior Court which was affirmed is appended as Exhibit C, and the findings of fact and conclusions of law of the Superior Court are appended hereto

as Exhibit D. A petition for rehearing by the Alaska Supreme Court was filed October 16, 1970 and an order denying the petition for rehearing was entered November 16, 1970.

Notice of appeal to this court was filed with the Alaska Supreme Court January 22, 1971.

GROUNDS FOR INVOKING JURISDICTION

This is a civil action challenging the constitutionality of an ordinance of the City of Fairbanks, Alaska on the ground that it violates the Constitution of the United States, Article I, Section 10 by impairing the obligation of contract and Amendment XIV to the United States Constitution by denying to appellant the equal protection of the laws. This appeal is taken pursuant to Title 28, United States Code, Section 1257(2).

The court below applied the questioned ordinance and by state action impaired the obligation of a contract of appellant and denied appellant the equal protection of the laws.

This case involves the validity of Section 7 of Ordinance No. 1068 of the City of Fairbanks which provides:

> Section 7. That leasehold interests and other interests in real property, including improvements, property taxable as real property, which may have been included on the personal property tax rolls, shall be transferred to the real property tax rolls and shall continue to be taxed.

The foregoing statute had the effect of impairing the obligation of a contract whereby the City of Fairbanks leased to appellant certain city owned real property and stipulated:

> It is specifically agreed that during the life of this

> lease as between City and Fairview the buildings placed upon the above described land shall, for the purpose of taxation only, be treated as personalty; and that the full value thereof can and will be carried on the personal property tax rolls of City, and Fairview undertakes and agrees to pay taxes thereon. Should there be any period during the life of this lease when said property shall not be within the taxing limits of City, Fairview shall nevertheless pay to City annually an amount in lieu of taxes equal to that which would have been charged as taxes based upon City's millage rate for general taxation for that year.

The City of Fairbanks, subsequent to the making of the lease, passed Ordinance 1068, approved January 30, 1961, eliminating *ad valorem* taxes on personal property. All other personal property in Fairbanks was thereafter not taxed. Appellant's buildings on the leased land which the City had agreed to treat as personal property were, pursuant to Ordinance 1068, placed on the real property tax rolls and real property taxes were collected from appellants.

Since the buildings which the City had agreed to treat as personal property were taxed and all other personal property in Fairbanks was exempt, appellant was denied the equal protection of the laws, in violation of Amendment XIV of the United States Constitution.

QUESTIONS PRESENTED

The following questions are presented by this appeal:

1. Whether Article I, Section 10 of the Constitution of the United States prohibiting a state from impairing the obligation of contract is violated by a decision of the Alaska Supreme Court and Section 7 of Ordinance 1068 of the City of Fairbanks providing for taxation of plaintiff's prop-